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SENSITIVE

FROM THE AMBASSADOR

E.O. 12958: DECL 02/26/2019
TAGS: [PGOV](#) [PREL](#) [KDEM](#) [KE](#)
SUBJECT: The Watershed Crisis and Fundamental Reform

Classified by: Ambassador Michael Ranneberger for reasons 1.4 (b,d)

¶1. (U) NOTE: This cable was prepared by the Ambassador in mid-November 2008 but was inadvertently not/not transmitted. However, we are sending it now for the record because it should be read in conjunction with Septel, which follows on U.S. policy and the current status of Kenya's reform efforts. END NOTE.

¶2. (C) Summary. This message delineates the state of play with respect to the coalition government -- which has just passed its six-month mark -- and the agenda for fundamental reform. The watershed crisis which Kenya experienced following the disputed elections in December last year resulted in national consensus on the need for fundamental reforms, particularly with respect to constitutional revision; revamping of the electoral process; ensuring accountability for post-election violence; land reform; promotion of national reconciliation; and public sector reforms. These are intended to address the root causes of the crisis, including the dangers of ethnic politics and inequitable distribution of wealth and power. While the constitutional revision process is moving forward, the recommendations to disband the electoral commission and to set up a Special Tribunal to try those suspected of carrying out violence have proved more problematic since they strike at the heart of the culture of impunity which has prevailed in Kenya. Kenyans from the top leadership down to ordinary citizens appreciated the decisive role the U.S. played in resolving the crisis, and look to the U.S. for continued leadership. I am speaking out on the need to implement the reform agenda. In private meetings with President Kibaki, Prime Minister Odinga, and a wide range of other political leaders, I am emphasizing the importance the U.S. attaches to the success of the coalition government, and the importance of proceeding with fundamental reforms. My team and I are in close contact with civil society, religious groups, the private sector, and media to energize them to maintain pressure for reform, and there is a growing crescendo. This same coalition of forces -- who were encouraged to mobilize during the crisis as a result of the early leadership from the U.S. on the need for a political solution -- is crucial to implementation of the reform agenda. Just as the crisis was ultimately resolved by Kenyans with a Kenyan solution, the reforms must be a product of a Kenyan process. We must encourage the process, but results cannot be imposed from outside. End summary.

The Crisis and Reform Agenda

¶3. (C) With the coalition government having completed over six months in office, the tough question of fundamental reform is coming into sharp relief. There are six major reform tracks agreed to as part of the national political accord that created the grand coalition headed by President Kibaki and Prime Minister Odinga: (1) constitutional revision; (2) electoral reform; (3) ensuring accountability for post-election violence; (4) land reform; (5) promotion of reconciliation through establishment of a Truth, Justice, and Reconciliation Commission and Commission on Ethnic Relations; and (6) police, civil service, and other public sector reforms.

14. (C) In the wake of the disputed presidential elections of December 27 last year, Kenya experienced a severe crisis, with at least 1,500 people killed, over 300,000 displaced, rampant cases of rape and excessive use of force, and substantial damage to the economy. The violence reflected long-standing ethnic rivalries over power and wealth. Kalenjins in their native Rift Valley, who supported Odinga, attacked Kikuyus there (who supported Kibaki), attempting to drive them off the land. Kikuyus struck back in various places using the notorious Mungiki criminal gangs.

15. (C) Kibaki and Odinga, the rival presidential candidates, were deeply shaken by what happened, as were virtually all Kenyans. There was a general recognition that the crisis constituted a watershed for the country, from which there was no turning back. With strong encouragement from the African Eminent Persons led by Kofi Annan and from the United States, Kibaki and Odinga embraced an agenda for reform as the political framework of the coalition government. A broad Kenyan consensus coalesced around agreement that fundamental reforms must be carried out in order to avoid an even worse outcome in connection with the 2012 general elections.

16. (C) In essence, the reforms are aimed at dealing with the root causes of the crisis. These include the following. First, mitigate the impact of ethnic politics through constitutional revision to disperse power (reduce the power of the presidency, strengthen the role of the prime minister, devolve power to local authorities through a federal system), reconciliation, and land reform. Second, make the electoral system more transparent and accountable through creation of a new, independent electoral oversight authority. Third, address the culture of impunity that has plagued Kenya since independence. Fourth, reform the police, civil service, and other public sector institutions to tackle impunity and corruption.

17. (C) A Commission on the elections was set up under the prestigious leadership of Justice Kriegler from South Africa, and it produced a credible report calling for establishment of a new, truly independent electoral body and a number of changes in electoral procedures. A Commission on the post-election violence, headed by well-respected Justice Waki of Kenya, produced a credible report which made recommendations for action in two main areas: reform of the police, and prosecution through a Special Tribunal (to be set up in Kenya but to include some international jurists) of those suspected of carrying out post-election violence. A confidential list of an undisclosed number of suspects was turned over to Kofi Annan, who has indicated he will give it to the International Criminal Court should the Special Tribunal not be set up.

Some Positive Reform Steps

18. (C) These reports, and the reform agenda laid out in the national political accord, have put into sharp focus what needs to be done. The coalition government is moving ahead with some elements of the reform agenda. Two bills relating to constitutional revision are moving through the Parliament and will hopefully be passed before the Parliament adjourns in mid-December for several months. The bills will launch a process of constitutional review to culminate in a referendum by the end of 2009. A bill to establish the Trust, Justice, and Reconciliation Committee is being considered, but has been delayed due to desire of civil society to ensure thorough input.

A bill to establish an Ethnic Relations Commission is under consideration. Interestingly, while 60 percent of the Parliament is new and composed of younger leaders, many are already enmeshed with old school politicians or focused on building personal power, or preoccupied with spending their new-found wealth (the parliamentarians are among the highest paid in the world). Although the principled, dynamic Speaker of Parliament wants Parliament to play a positive role to move the country forward, we are not yet seeing the Parliament exert leadership on the reform agenda. It is also worth noting that, while land reform is being worked on within the government, this is an enormously complex issue that will take years - if ever - to sort out.

Striking at Impunity

¶9. (C) The recommendations of the Kriegler and Waki commissions, however, are proving much more difficult to implement. Both recommendations strike at the very heart of the culture of impunity that has prevailed in Kenya for over four decades. Actually holding individuals accountable for major wrongdoing has been extremely rare. High-level anti-corruption cases have percolated through the courts for years, and almost invariably end with no convictions. From time to time someone is sacrificed and found guilty (and there have been some cases of assassinations as well to ensure no accountability), but there has been no systemic accountability. The police, for example, are not being held accountable for many suspected cases of excessive use of force, and there is substantial resistance to real police reform. The high profile steps of holding the electoral commissioners accountable for the flawed election process and bringing prominent individuals to justice for supporting violence are extremely threatening to some in the entrenched political class. After initial waffling, the coalition government has moved to dismiss the current electoral commissioners through introduction in Parliament of a constitutional amendment required to do so, but the commissioners have filed a suit in court to block this.

¶10. (C) The most contentious issue is implementation of the Waki commission recommendation to establish a Special Tribunal. While no one knows exactly who is on the Waki list, senior officials in Kibaki's Party of National Unity (PNU) and in Odinga's Orange Democratic Movement (ODM) are thought likely to be on it. Those most prominently suspected are Uhuru Kenyatta (who is a major force in the PNU and serves as a Deputy Prime Minister) and William Ruto (who is a major force in the ODM and serves as Minister of Agriculture). Other prominent personalities on both sides are thought to be on the list. Both Kibaki and Odinga have therefore been under pressure not to establish the Special Tribunal. Some have proposed side-tracking the recommendation by establishing some sort of interim investigation mechanism.

U.S. Role and Actions

¶11. (C) The watershed crisis that Kenya experienced requires fundamental reform to address the issues that led to conflict and to help prevent an even worse scenario in the future. I have been outspoken in calling for implementation of the recommendations, and A/S Frazer's comments during her recent visit were very helpful in maintaining pressure for implementation. The U.S. played a decisive role in resolving the crisis. Recent Gallup polling shows that Kenyans have an 89 percent favorable approval rating for the role the U.S. played. The U.S. role was appreciated by Kibaki and Odinga. From the top down to ordinary citizens, Kenyans are looking to the U.S. to continue vigorous engagement to ensure that the reform agenda is carried out so that democratic institutions are strengthened. Kofi Annan visited Kenya to receive both the Kriegler and Waki commission reports, and has been outspoken in insisting that the recommendations be implemented. Following the U.S. and Annan leads, key European countries are also speaking out.

¶12. (C) U.S. leadership is encouraging the same coalition of Kenyans that helped resolve the crisis to mobilize again to push for implementation of the reform agenda. During the crisis U.S. leadership encouraged Kenyans to speak out, and the pressure coming from ordinary Kenyans ultimately produced a Kenyan solution to the crisis. The same thing is happening now. Civil society organizations, religious groups, the media, the private sector, and ordinary Kenyans are now speaking out to insist on implementation.

¶13. (C) Kibaki and Odinga have clearly heard the U.S. message and the calls by Kenyans, and both have lined up in support of implementation. However, they must still manage opposition of influential members of their respective parties. While Uhuru (the most prominent Kikuyu leader) and Ruto (the most prominent Kalenjin leader) have both blandly stated that they have nothing to fear from a Special Tribunal, neither privately supports implementation. Both have the ability to cause major problems within their respective parties and to stir up trouble, but probably not, at the end of day, to threaten the existence of the coalition government. The Waki issue has proved particularly divisive within the ODM, where Odinga was already under pressure regarding other issues such as not consulting closely enough with party leaders. In one-on-one

conversations with Kibaki and Odinga I -- and with a wide range of others -- have made clear the importance the U.S. attaches to the success of the coalition government. I have spelled out our view that implementation of the reform agenda is key to the success of the coalition government, and to the future stability of Kenya. My team and I have also been reaching out to civil society, the private sector, and media to encourage them to be assertive on the reform agenda, and there is a growing crescendo.

¶14. (C) I believe that concerted pressure from the U.S., Annan, key Europeans and, most importantly, Kenyans themselves will result in movement on key items of the reform agenda, including the Waki recommendations. Failure to move ahead with the reform agenda would likely lead to renewed instability even before the 2012 elections. Beginning the constitutional review process (which will encompass revamping the electoral commission if it does not happen before that) will send a positive message to Kenyans and buy time to carry out the other complex reforms being considered. In the unlikely event that this were not to happen, high-level U.S. intervention would be essential to keep the reform process on track.

¶15. (C) The most problematic issue is the Waki commission recommendation for a Special Tribunal. Annan has publicly stated that he will give the list to the International Criminal Court on February 28, if the Special Tribunal has not been formed by then. Should this happen, we will have to decide whether to support the step. The Kenyan leadership (and the political class as a whole) need to know that the crisis has opened the way for a new democratic era for Kenya, and that the international community will stand by the Kenyan people to ensure that the major crisis Kenya experienced results in fundamental change to strengthen democracy and promote the well-being of all. Rising to this challenge of history is asking a lot of Kibaki and Odinga - who have lived their lives doing business the traditional way - but they are the glue that holds the coalition government together and the only players who can lead the country forward. They rose to statesmanship in resolving the crisis. With our prodding, they have the potential to leave legacies of fundamental reforms that would lay the basis for transformation of Kenya into a much stronger democracy.

RANNEBERGER